

### **REMARKS**

This is in response to the Office Action mailed on November 28, 2005 in which claims 1-17 were rejected and claim 17 was objected to. With this Amendment, claim 17 has been amended. Claims 1-17 are pending in this application.

#### **Amendments to the Drawings**

New corrected drawings in compliance with 37 CFR 1.121(d) were required because Figure 1 was not designated by a legend such as "Prior Art," and because reference numeral "26" was used to designate both the "wheels" and the "outrigger frame" in several of the figures. With this Amendment, please replace Figures 1, 2, 3A, and 4 with the four (4) replacement sheets enclosed. Figure 1 has been amended to include the notation "Prior Art." Figures 2, 3A, and 4 have been amended to change the reference numeral corresponding to the outrigger frame from "26" to "25."

#### **Amendments to the Specification**

The Specification has been amended to overcome the objections presented in the Office Action. In particular, the reference numeral "26" was used to identify both the wheels and the outrigger frame. With this Amendment, the reference numeral corresponding to the outrigger frame has been changed from "26" to "25."

#### **Amendments to the Abstract**

The Abstract of the Disclosure has also been amended to include the "steerable wheel" aspect as requested by the Examiner. In addition, the Abstract of the Disclosure has been amended to conform with the 50 to 150 word range as requested by the Examiner.

### Claim Objections

In the Office Action, claim 17 was objected to because of an informality. With this Amendment, claim 17 has been amended to recite “a pair of support plates” as suggested by the Examiner.

### Claim Rejections - 35 U.S.C. § 103

Claims 1, 2, 5, 7-9, and 11-13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's Prior Art Figure 1 in view of Smith et al. (USP 6,189,901) (“Smith”). Claims 3 and 4 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's Prior Art Figure 1 in view of Smith as applied to claims 1, 2, 5, 7-9, and 11-13 above, and further in view of Cherney et al. (USP 5,897,123) (“Cherney”). Claims 6, 12, and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's Prior Art Figure 1 in view of Smith as applied to claims 1, 2, 5, 7-9, and 11-13 above, and further in view of French (USP 2,650,106). Claims 10, 14, and 15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's Prior Art Figure 1 in view of Smith as applied to claims 1, 2, 5, 7-9, and 11-13 above, and further in view of Wyatt et al. (USP 4,492,389) (“Wyatt”). Claim 17 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's Prior Art Figure 1 in view of Smith as applied to claims 1, 2, 5, 7-9, and 11-13 above, and further in view of Konop (USP 6,247,713). In order to reject a claim under 35 U.S.C. § 103 as being obvious over the prior art, all of the claim limitations must be taught or suggested by the prior art. See M.P.E.P. 2143.03, citing In re Royka, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

### Independent claim 1

Claim 1 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's Prior Art Figure 1 in view of Smith. In rejecting independent claim 1, the Examiner states that Applicant's Prior Art Figure 1 shows a concrete pumping truck having frame rails, a hopper carried at the rear end of the truck, and an outrigger system. According to the Examiner, Figure 1 does not show an auxiliary axle

system pivotally mounted at the rear of the truck, but it is well known in the art to mount an auxiliary axle system at the rear of a work vehicle that typically hauls heavy loads.

Smith does not show, teach, or suggest “[a] concrete pumping truck having a forward end and a rear end with a hopper carried at the rear end of the concrete pumping truck, the concrete pumping truck comprising an auxiliary axle system pivotally attached to the rear end of the truck adjacent the hopper . . . .” Due to the placement of a hopper at a rear end of the concrete pumping truck, as recited in claim 1, mounting the auxiliary axle system shown in Smith on the rear end of the truck would not work. In particular, the present invention recited in claim 1 permits an auxiliary axle system having a pair of steerable wheels to be pivotally attached to a rear end of a concrete pumping truck adjacent a hopper while allowing the pair of steerable wheels to be movable between a first position and a second position. Thus, due to the placement of a hopper at the rear end of the concrete pumping truck, the auxiliary axle system taught by Smith could not be attached to the concrete pumping truck so as to provide “a pair of steerable wheels movable between a first position in contact with a ground surface and a second position elevated above the ground surface,” as recited in claim 1.

“Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation . . . in the references themselves or in the knowledge generally available to one of ordinary skill in the art.” See M.P.E.P. 2143.01. The teaching or suggestion to combine the references must be found in the prior art, not in the Applicant’s disclosure. See M.P.E.P. 2143, citing In re Vaeck, 947 F.2d 488, 20 U.S.P.Q. 1438 (Fed. Cir. 1991). There is no teaching or suggestion to modify the teachings of Smith to attach an auxiliary axle system to a concrete pumping truck, so that a combination with Applicant’s Prior Art Figure 1 would yield the invention recited by claim 1. The modification that would be required to satisfy claim 1 is suggested only by a hindsight reconstruction based on the disclosure of the present application. Because there is no teaching or suggestion to modify the teachings of Smith so that they can be combined with

Applicant's Prior Art Figure 1 in the manner recited by claim 1, the references do not render claim 1 obvious. Therefore, the rejection of independent claim 1 under 35 U.S.C. § 103(a) should be withdrawn.

Dependent claims 2-6

Dependent claim 2 recites "a U-shaped frame having a pair of spaced arms connected at one end to a cross member, the pair of spaced arms having a free end connected to a pair of spaced axles, the pair of spaced axles being pivotally connected to a respective one of the pair of steerable wheels. . . ." There is no teaching, suggestion, or motivation in Smith to utilize "a pair of spaced axles" in an auxiliary axle system. As shown in Figure 5 of the Smith patent, a single axle is disposed between a pair of wheels. In particular, according to Smith, "[d]isposed at opposite ends of the axle 160 may be spindles 164 about which rotate the brake drums 166, wheels 169, and tires 19." (Col. 15, lines 23-25.) Since the Smith patent does not provide a teaching, suggestion, or motivation to include a "pair of spaced axles" connected to a respective one of a pair of steerable wheels as recited in claim 2, the rejection of dependent claim 2 should be withdrawn.

Dependent claims 2-6 depend from independent claim 1 and are allowable therewith. In addition, the combinations of features recited in claims 2-6 are patentable on their own merits, although this does not need to be specifically addressed herein since any claim depending from a patentable independent claim is also patentable. See M.P.E.P. 2143.03, citing In re Fine, 5 U.S.P.Q.2d (BNA) 1596 (Fed. Cir. 1988).

Independent claim 7

Claim 7 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's Prior Art Figure 1 in view of Smith. As discussed previously in reference to independent claim 1, due to the placement of a hopper at a rear end of the concrete pumping truck, mounting the auxiliary axle system shown in Smith on the rear end of the truck would not work. There is once again no teaching or suggestion to modify the teachings of Smith to attach an auxiliary axle system to a concrete pumping truck, so that a combination with Applicant's Prior Art Figure 1 would yield the invention recited by claim 7. The

modification that would be required to satisfy claim 7 is suggested only by a hindsight reconstruction based on the disclosure of the present application. Therefore, the rejection of independent claim 7 under 35 U.S.C. § 103(a) should be withdrawn.

Dependent claims 8-12

Dependent claim 8 recites "a pair of spaced short axles, each axle of the pair of axles being pivotally attached to a respective one of the pair of wheels. . . ." There is no teaching, suggestion, or motivation in Smith to utilize "a pair of spaced short axles" in an auxiliary axle system. As shown in Figure 5 of the Smith patent, a single axle is disposed between a pair of wheels. In particular, according to Smith, "[d]isposed at opposite ends of the axle 160 may be spindles 164 about which rotate the brake drums 166, wheels 169, and tires 19." (Col. 15, lines 23-25.) Since the Smith patent does not provide a teaching, suggestion, or motivation to include a "pair of spaced short axles" as recited in claim 8, the rejection of dependent claim 8 should be withdrawn.

Furthermore, dependent claims 8-12 depend from independent claim 7 and are allowable therewith. In addition, the combinations of features recited in claims 8-12 are patentable on their own merits, although this does not need to be specifically addressed herein since any claim depending from a patentable independent claim is also patentable. See M.P.E.P. 2143.03, citing In re Fine, 5 U.S.P.Q.2d (BNA) 1596 (Fed. Cir. 1988).

Independent claim 13

Claim 13 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's Prior Art Figure 1 in view of Smith. As discussed previously in reference to independent claims 1 and 7, due to the placement of a hopper at a rear end of the concrete pumping truck, mounting the auxiliary axle system shown in Smith on the rear end of the truck would not work. There is once again no teaching or suggestion to modify the teachings of Smith to attach an auxiliary axle system to a concrete pumping truck, so that a combination with Applicant's Prior Art Figure 1 would yield the invention recited by claim 13.

The modification that would be required to satisfy claim 13 is suggested only by a hindsight reconstruction based on the disclosure of the present application.

In addition, independent claim 13 recites “a pair of spaced short axles, wherein each axle of the pair of spaced axles is pivotally connected to a respective one of the pair of wheels . . . .” Once again, there is no teaching, suggestion, or motivation in Smith to utilize “a pair of spaced short axles” in an auxiliary axle system. As shown in Figure 5 of the Smith patent, a single axle is disposed between a pair of wheels. In particular, according to Smith, “[d]isposed at opposite ends of the axle 160 may be spindles 164 about which rotate the brake drums 166, wheels 169, and tires 19.” (Col. 15, lines 23-25.) Since the Smith patent does not provide a teaching, suggestion, or motivation to provide a “pair of spaced short axles” as recited in claim 13, and since the only motivation to combine the teachings of the Smith patent with Applicant’s Prior Art Figure 1 is the result of the Applicant’s disclosure, the rejection of independent claim 13 should be withdrawn.

#### Dependent claims 14-17

Dependent claims 14-17 depend from independent claim 13 and are allowable therewith. In addition, it is respectfully submitted that the combinations of features recited in claims 14-17 are patentable on their own merits, although this does not need to be specifically addressed herein since any claim depending from a patentable independent claim is also patentable. See M.P.E.P. 2143.03, citing In re Fine, 5 U.S.P.Q.2d (BNA) 1596 (Fed. Cir. 1988).

CONCLUSION

In view of the foregoing, all pending claims 1-17 are in condition for allowance. A notice to that effect is requested. The Examiner is invited to contact the undersigned at the telephone number listed below if such a call would in any way facilitate the allowance of this application.

Respectfully submitted,

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